

## METROPOLITAN AREA PLANNING COMMISSION

### MINUTES

December 5, 2002

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, December 5, 2002, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Bud Hentzen, Chair; Kerry Coulter, Vice-Chair; Ron Marnell; Harold Warner; Frank Garofalo; Ray Warren; James Barfield (late arrival); John McKay, Jr.; Don Anderson and Dorman Blake. Jerry Michaelis; David Wells; Bill Johnson and Elizabeth Bishop were not present. Staff members present were: Dale Miller, Secretary; Donna Goltry, Assistant Secretary; Scott Knebel, Senior Planner; Jess McNeely Associate Planner; Jamsheed Mehta, Transportation Supervisor; Dave Barber, Land Use Supervisor; and Rose Simmering, Recording Secretary.

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1. **Approval of MAPC meeting minutes for November 21, 2002.**

Minutes were not sent out to MAPC members.

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2. **Redevelopment project plan for the redevelopment of the Old Town Cinema District through tax increment financing.**

Allen Bell, Finance Department, gave a presentation on the redevelopment project plan for the Old Town Cinema Tax Increment Financing District. The TIF redevelopment district is bounded on the west by Santa Fe Avenue, on the east by Washington Street, on the north by Third Street North and on the south by Second Street North.

The City's proposed Old Town Cinema Redevelopment Project Plan Area involves the western half of the TIF redevelopment district and encompasses 24 parcels from Santa Fe Street to Rock Island Avenue, and from Second to Third Street (see Attachment "A"). Specifically, the Project includes the construction of a 35,000 sq. ft., six-screen cinema complex, a 600 car multi-story public parking garage including 14,000 sq. ft. of commercial retail space within the garage, two 42,000 sq. ft. commercial retail/office buildings, a central public plaza area, and other related site and public improvements. The City will purchase land, assist with the site preparation, and provide public amenities as its contribution to this mixed use development. The City will provide public funding, including tax increment financing and general obligation bond financing paid from Old Town parking revenues and general city taxes, to finance the costs of developing the multi-story parking garage with retail space, a public outdoor plaza and streetscape improvements. The City has entered into a development agreement with Old Town Cinema LLC that will provide a turn-key, design-build construction of the public amenities by the developers on behalf of the City.

Total project public cost is estimated at \$9,486,000. Eligible projects costs are estimated at \$9,300,00. With a project completion date of January 2005, the total assessed value of new building construction is estimated at \$4,615,275 (compared to the original 1999 assessed value of \$471,134), resulting in a captured assessed value of \$4,144,141 for the TIF District. It is also estimated that the maximum annual property tax increment will be \$389,635 starting in 2006. The comprehensive financial feasibility study done as part of this Redevelopment Project Plan shows that the benefits derived from the project will exceed the costs, and that the income derived there from will be sufficient to pay for the necessary project costs.

Pursuant to K.S.A. 12-1772, the MAPC has a responsibility to review the proposed Redevelopment Project Plan for the Old Town Cinema Redevelopment District and make a determination of consistency with the Wichita-Sedgwick County Comprehensive Plan. Dave Barber recommended that the MAPC pass a resolution finding the proposed Old Town Cinema Redevelopment Project Plan to be consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

Barfield in at 1: 39 p.m.

ANDERSON Where does Core area C.I.P. financing come from?

BELL Increases in property taxes and parking revenues. We do not use sales tax. Core Area CIP Land Acquisition \$1.9 million, Core Are CIP Parking Structures 2.6 million.

ANDERSON The answer is that 4.5 million will be funding from the City of Wichita in the C.I.P.

BELL Yes, that is correct.

GAROFALO I think this is a nice project. I wonder why, in this whole planning process, that our finding of consistency with the Comp Plan isn't done first, rather than last?

BELL We are following state law process. It is where is it is because of the law. We did talk about tax increment process early with you, and we usually don't have a detailed plan in the beginning stages. The City has previously authorized this project. We didn't want to hold up development.

GAROFALO Suppose we didn't approve this. What would you do then?

BELL We would have to look at other funding sources available in the C.I.P.

GAROFALO Is there a timeframe or sunset period for the use of tax increment funds?

BELL The clock started ticking in 1999.

GAROFALO Is the tax increment fund handled separately, or included with the CIP?

BELL No they are kept separately from the C.I.P.

BARFIELD Does the City own any of these properties here?

BELL Yes, we own the unimproved parking lot at Mead and Second Street. That property is being leased to the purchaser.

BARFIELD All of the City property will be demolished?

BELL Yes. Raytheon had a warehouse there.

HENTZEN In the Resolution that you provided us, if you will go down to the fourth paragraph, there is a typo error.

WHEREAS, the City of Wichita proposes to undertake a Redevelopment Project within the Old Town Cinema Redevelopment District in which Tax Increment Financing will be used for public infrastructure improvements in connection with a multi-screen cinema complex, a two-story mixed-use **parking garage**/retail facility, two commercial retail buildings, and a public plaza area, other site improvements, and other related public improvements as set out in the Redevelopment Project Plan; and

BELL Yes, that is correct. It should read parking garage.

HENTZEN Does each TIF district have a separate fund?

BELL Yes.

ANDERSON I feel like we could have had more information prior to now in the stage that they are in. In terms of our approval, I don't know why it even comes to this board other than it being a state law. I don't know why we are not in the planning process. I am not sure this is the way to do this. I am not sure I can support this. I think this should have been handled differently.

**MOTION:** That the MAPC pass a resolution finding the proposed Old Town Cinema Redevelopment Project Plan to be consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

**MARNELL** moved, **WARNER** seconded the motion, and it carried (7-3) **BLAKE, ANDERSON** and **BARFIELD** opposed.

3. **Case No.: CON2002-00044** – Gordon and Beverly Ruble request Sedgwick County Conditional Use to permit a boarding kennel on property zoned "RR" Rural Residential on property described as:

The West Half of the East Half of the Northwest Quarter of the Northeast Quarter of Section 17, Township 29 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas, except the North 60 feet thereof for road. Generally located South of 87<sup>th</sup> Street South, and approximately 2000 feet west of Webb Road.

**BACKGROUND:** The applicant is requesting a Conditional Use for a dog kennel on a 10-acre un-platted parcel located south of 87<sup>th</sup> Street South and east of Webb Road. Derby's city limits are approximately 3000 feet west of the application area. The application area and all surrounding properties are zoned "RR" Rural Residential. Much of the area surrounding the application area is in agricultural fields. One neighboring residence lies approximately 600 feet from the proposed use site to the east, another neighboring residence lies approximately 430 feet from the proposed use site to the northwest, and another neighboring residence lies approximately 180 feet southwest of an existing barn for the proposed use. The application area is well screened to the west by existing vegetation. The application area is developed with a primary single-family residence, and a 48x36 foot barn. The applicant intends to build another barn, to a maximum size of 60x36 feet, to house the kennel operation; the applicant also intends to construct a fenced outdoor exercise area between the two barns (see the attached site plan). The applicant indicated to staff a desire to operate a kennel facility for 50 to 60 dogs.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH:	"RR"	agricultural fields
SOUTH:	"RR"	agricultural fields, flood plain
EAST:	"RR"	large lot residence
WEST:	"RR"	large lot residences

**PUBLIC SERVICES:** The property is located along 87<sup>th</sup> Street South, an unpaved two-lane section line road with a 50-foot half-width right of way at the application area. No traffic counts or projections are available for this section of 87<sup>th</sup>. The 2030 *Transportation Plan* does not designate this road as a future arterial. The application area is served by an on site sewage lagoon and on site well.

**CONFORMANCE TO PLANS/POLICIES:** The "Sedgwick County Development Guide" of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan*, amended in January 2002, identifies this area as within the Derby "Small City Growth Area".

The Derby Comprehensive Plan identifies the application area (3000 feet due east of Derby) as within the "Ten-year Urbanizing Growth Area", although the Derby planner states that no requests are currently taking place in this area, most development requests are taking place northeast of the city. The Derby Zoning Ordinance lists "animal kennel" as a prohibited use in residential districts, and a prohibited use as a home occupation.

The *Wichita-Sedgwick County Unified Zoning Code* (UZC) lists "Kennel, Boarding/Breeding/Training" as a Conditional Use in the "RR" district. The UZC definition of "Kennel, Boarding/Breeding/Training" is "...premises housing over ten adult dogs." The UZC supplementary conditions for this Conditional Use are attached to this report, they include a required separation of at least 200 feet from any outdoor kennel facilities to any neighboring residences, and required screening of kennel facilities located within 600 feet of any adjoining property line.

**RECOMMENDATION:** Planning staff finds that because the requested Conditional Use is within a designated Small City Growth area, caution should be taken to ensure that this potential use does not hamper future anticipated residential development. Therefore staff recommends that a time limit be placed on the Conditional Use, consistent with Derby's designation of this area as the "Ten-year Urbanizing Growth Area." Staff finds that the number of dogs kenneled at this site should be limited, and that conditions should mitigate negative effects of the use on nearby residents, particularly the residence less than 200 feet from the proposed use site. Staff finds that the submitted site plan will require revision to be in compliance with the UZC requirements for screening and a 200 foot separation of outdoor facilities from residential neighbors. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to a revised site plan, approved by the Planning Director, demonstrating required distance separation and screening, and the following conditions.

1. The Conditional Use shall comply with section III.D.6.k. of the Wichita-Sedgwick County Unified Zoning Code, and applicable federal, state, and local requirements (e.g. Chapters 5 and 14 of the Sedgwick County Code).
2. The applicant shall obtain all applicable permits including, but not limited to: building, health and zoning.
3. Development and maintenance of the site shall be in conformance with the approved site plan.
4. Existing tree/hedge rows along the boundaries of the site shall be preserved and trees replaced as required.
5. The Conditional Use shall be valid for a period of 10 years, and may be extended for a period of two years, if approved, by use of an administrative adjustment.
6. The Conditional Use shall be limited to a maximum of 50 kenneled dogs.
7. The kennel shall be for housing and training only, breeding shall not be permitted under this Conditional Use.
8. All kenneling shall take place inside the indicated buildings. Dogs shall be outside for no more than two hours a day, between the hours of 8 am and 8 pm, only in the designated exercise area, and only when supervised.
9. Drop off and pick up of dogs shall not take place between the hours of 10 pm and 6 am.
10. The designated exercise area shall be enclosed by a solid screening fence, the fence shall be a minimum of six feet high.
11. The kennel operator shall have on file proof of rabies vaccinations by a licensed veterinarian and proof of identification and ownership for all dogs five months and older.
12. Artificial lighting shall be provided in any indoor run for a minimum of 25 feet of candle illumination. Lighting shall be a minimum of 30 inches above the floor and uniformly distributed.
13. Cleaning of the boarding kennel facility shall be performed as often as necessary to maintain sanitary conditions, and a "suitable method" of eliminating excess water from animal housing facilities shall be provided as determined by the Department of Community Health. Interior surface materials shall be constructed of non-porous materials that are impervious to moisture. The indoor kennel facilities shall have fresh air ventilation providing a complete air change at a minimum of five- to six- minute intervals. Exhaust and vents or air conditioning shall be provided when the ambient temperature is 85 degrees or higher.
14. Sufficient quantities of food and water shall be provided to keep the dogs in good physical condition. The animals shall be fed at least once daily and provided clean water at all times. Food and water containers shall be located to minimize contamination and shall be cleaned as often as necessary to maintain sanitary conditions.
15. All waste materials shall be disposed of in such a manner as to minimize odors and disease hazards. The boarding kennel shall be maintained in a sanitary manner as required by applicable codes (e.g. Chapter 14 of the Sedgwick County Code).
16. The animals confined in the boarding kennel shall be maintained in good physical condition, free of infectious diseases and parasites.
17. The boarding facility shall be open to the unannounced inspection by Sedgwick County of Code Enforcement personnel during reasonable daylight hours to insure continued compliance with the above requirements.
18. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: Properties surrounding the application area are all zoned "RR", and are used for agricultural and large lot residential purposes, giving a "rural" character. The UZC lists kennels as a Conditional Use with conditions to protect the character of rural areas. The listed conditions should work to protect the character of this area; the conditions put a time limit on the use, for if and when this use is out of character with anticipated urban-scale residential development. Existing hedgerows and future landscape screening should preserve the character of this area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential, which primarily permits large lot residential uses. The site could continue to be used as a residence without the Conditional Use.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Potential noise, odors, and traffic generated by the requested Conditional Use could negatively affect nearby residents. The listed conditions should work to minimize negative effects, and allow the use to expire if incompatible with future development.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested Conditional Use is in conformance with the *Wichita-Sedgwick County Comprehensive Plan*, as the property is currently zoned "RR", it is not in conformance with the plan as a rural use in a designated Small City Growth Area. The requested Conditional Use is in conformance with the *Wichita-Sedgwick County Unified Zoning Code*, provided that the supplementary conditions of the code are placed on this use.
5. Impact of the proposed development on community facilities: The requested Conditional Use will result in an increase in traffic on unpaved 87<sup>th</sup> Street South. Right of way at the application area is sufficient for future widening, should widening be necessary.

JESS MCNEELY, Planning staff presented staff report.

GAROFALO Is there anything or any changes in the proposal since the County Commission meeting?

MCNEELY No, there are no new changes since that time.

GAROFALO That was presented to the Derby Planning Commission? They denied it twice.

WARREN What are we asked to rule on what do we need to do? Why is this back here?

MCNEELY You are considering the old application with new conditions the County Commission added.

MILLER You heard the majority of the changes at your initial hearing. It had to do with the hours of pickup that were reduced, the total number of dogs was increased by 10, and then the notion that the first 30 dogs would be contained in one original building and they would be able to have the second 30 dogs when they have the second building. There was some confusion, but it was approved. What you are being asked to do today is to say if your original vote will still stand or change to the County Commission—on the hours and total number of dogs to be allowed. What is being clarified is how those dogs will be split up and the time that they will be outside.

GREG FERRIS Agent for the applicant. Mr. Rubble has a power point presentation to show everyone. [Power point presentation was shown to MAPC] The findings at the Derby Planning Commission—we have a problem with their conditions. Rural Residential allows dog kennels by right only if the area is less than 20 acres; then you will need a conditional use. During the Derby Planning Commission in their findings they said that there might be noise and smell but in their deliberations they said there would not be noise and smell. We are willing to concede with a 10 year Conditional Use from this body. This is a rural environment. We can have 10 dogs already.

BEVERLY RUBLE Applicant. One of the reasons the Derby board found for turning our proposal down was that our business would change the rural characteristic of the area, yet they plan to look at annexing it in the year 2010. They say that businesses don't belong in this area. There's already an auto body shop, which is surrounding by the church property. When the church builds on their property and instigates their plan to develop the remainder of the land with homes they change the rural characteristic of this area—churches, auto body shops, party house between Webb and Greenwich, large lot subdivision and power station on 87<sup>th</sup>—are all commercial endeavors. The rural characteristic of this area has already changed since we've been there and it's going to continue to change. My husband talked to one of the Derby Commissioners and what his no vote was based on. He said that he based it totally on the fact that it does not fit Derby's Comprehensive Plan and that he does not think that we're planning to operate for 15 years. I don't know where he got his information; he didn't ask us for any input. In 15 years my husband will be 75 years old and we don't plan to ask for an extension. The opposition asked who will monitor compliance. Half of these conditions such as lighting, temperature control, and noise insulation, would all be met prior to us opening. The USDA's own guidelines require them to inspect every kennel annually in addition to expected 5 month; this is already a high-regulated business. We've been members of the Sedgwick County Sheriff Reserve, Girl Scouts, volunteer Kansas Humane Society last year. Thank you.

GREG FERRIS We did pass out signatures of support of this. We have a letter from the church. Not everyone is opposed to this. It is highly buffered by trees; the floodway will not encourage development in this area.

BARFIELD Mr. Ferris you won't accept a 10-year time limit? The application is for 15 years.

FERRIS What we're proposing is the staff recommendation comes back to your board. If annexed, it would not come back to this board.

GAROFALO Mr. Ferris were you out at the Derby Planning Commission?

FERRIS Yes, I was.

GAROFALO Was there any indication for about a time frame for annexation?

FERRIS Their (Derby's) plan calls for seven years from now -it draws a big area with challenges, floodway. We believe 10 years is reasonable, we think closer to 15 years. They may annex further to the west in the seven-year time period. Due to the constraint of flood way, size of lots, when they get past the large parcels they run into smaller parcels.

GAROFALO If they did annex in eight years what would the situation be?

FERRIS Nonconforming use, or go to Derby to ask for correct zoning to allow this. Derby has two kennels.

MARNELL You mentioned floodways on this photo-where is the floodway?

FERRIS Mainly by the tree area, that area south of there is all floodway.

MARNELL To the west of this property is church property?

FERRIS You can't really see on that, you will have to get an aerial.

MARNELL Thank you.

WARNER Is there a residence on the Lavergne property?

FERRIS Yes there is.

BARFIELD I'm looking here that 49% protested this. Have you met with those people?

FERRIS We met with those, two withdrew their protest. 28% of the ownership it drives up to 49% of the square footage.

HENTZEN On that audio I heard some cows mooing, could those people who own this property own some cows on that property, the property to the west have cows?

FERRIS They can have cows, chickens.

HENTZEN Any questions of Mr. Ferris?

BOB KAPLAN 430 N. Market, I represent Mary Hunter who lives west of the property, I have a different take on this gentlemen. This is not about neighbors or neighborhood opposition, it's not really about whether to approve or not to approve, it's a much deeper issue-who determines Derby's future? Are you going to do this here or look at the facts. It is designated as planned residential part of Derby's residential plan, in compliance of the plan, small city growth area. Why is that important? The Derby ordinance specifically prohibits animal kennel; you would be superseding the ordinance in Derby. You overruled (it), as Mr. Ferris said, you immediately create a nonconforming use. I've never known planners to go out and create a non-conforming use. Leave the determination to Derby. Zoning use in character in surrounding area is totally residential. That criteria does not support it. They talk about the noise, that the code will help minimize it to conform to the Comprehensive Plan. Mr. Ferris has now acknowledged it's in violation to their Comprehensive Plan. Commercial traffic on this road? No way that it supports it. The lagoon in the floodway goes right into the pond. Animal waste? This place is simply not their place; this is wrong. You have in your package the findings in the back, the November 22<sup>nd</sup> letter. Derby is right on with their findings. They don't support it. Legally they are right. You let Derby decide their future. Don't do it for them.

BARFIELD Mr. Kaplan, if this were a operating business today would this be a nonconforming?

KAPLAN It would be a prohibited use. It's contrary to their code. It can't be approved in the county, it couldn't be legally.

BARFIELD I understood you to say it would be a nonconforming business once Derby annexes it.

KAPLAN Today Derby doesn't have (that authority). They only have advisory (authority) today.

BARFIELD Is it in your opinion that Derby would annex it in the next 10 years?

KAPLAN I don't have the expertise to answer that question. This is very close, 3000 feet to the city limit. Judgment tells me yes, it will be annexed, and timeframe I will have to leave to the Derby City Council.

BARFIELD My final question-do you have documentation that this will be annexed in the next 10 years?

KAPLAN Only as their Comprehensive Plan provides. I don't recall seeing that in their Comprehensive Plan. In some future date is the City of Derby.

HENTZEN Mr. Kaplan I think you can answer this because of your background. If we vote something, that is only the recommendation to the County Commission. How about the Planning Department in Derby? Do they say yes or no-is that the recommendation to the Planning Commission?

KAPLAN This will not go to WCC.

MILLER Derby is making a recommendation to BOCC and MAPC.

HENTZEN Whatever we send will go to BOCC?

KAPLAN Yes this will go to the BOCC.

MARY LEATHERS, State Farm Insurance, Derby KS. We have the Ruble's homeowners insurance. The property policy is in a flood zone. It has to be determined if this area is in the flood plain. FEMA could penalize the bank the property is not in the flood zone. We wanted to bring this up because feces are not going to flood Derby. The last meeting-people wanted to know how this business is going to be controlled. They will have to have a license with the Kansas animal department from Topeka. The business can be shut down if they are in any violations.

JENNIFER HUNTER Please think about the Derby Planning Commission denial. Please make a decision on the facts today and the things that are recorded. [She shows where her mother's property is on the aerial.] We are questioning if the lagoon is in a floodway. It was not build to have waste from a bunch of dogs. My mother has nine grandchildren; we swim in the pond, fish in the pond. What will happen if this lagoon overflows and it goes into my mother's pond? I have some real problems with the environmental problems or potential problems. The staff report was done poorly. There are other businesses in the area-they are talking about the neighborhood barn. There will be nine homes affected because he is in the center of all of us. If you look at the one (dog kennel) at 159<sup>th</sup> and Central-that is on sewer for their doggie care. This is not a commercially zoned area. This is a residential area already. Derby has voted this down twice and we want you to vote this down as well. This is one-half mile from the Derby City limits and Derby just spent lots of money on a new school out there.

WARNER How long has this lagoon been there? Has it ever overflowed?

HUNTER About ten years it has been there, and no, it has never overflowed yet but we had a scare about two years ago. It was designed for one household.

BARFIELD I was not and have not been contacted by Mr. Ferris. What documentation do you have that Derby would annex this into Derby within five years.

HUNTER I spoke with the Planning Commission in Derby and they think it will happen sooner and not later.

WARREN I have not been spoken to either. I don't like that implication.

HUNTER We haven't contacted anybody.

MARNELL This Commission does have a policy to disclose if they have been contacted.

GAROFALO I have not heard from anybody either.

MARY MYERS 613 Briarwood I have lived there since 1969. I work for the church and I agree with Mr. Kaplan and I think a dog kennel out there is a mistake. This is good land out there. This area is in Derby's long-range plans. I don't think most people will not put their home next to a doggie care. The lagoon will not handle the waste from the dogs. This is not the place for it. Put it in an area where there is City sewer.

TAD LAVERGNE 1312 S Hilltop, Derby KS I own property within 180 feet to the barn. Where there are chemicals used in the clean up? Cows, pigs, chickens become a hobby how much traffic is going to be coming up and down this road it becomes a wash problem. Why not put the doggie daycare in Derby. It is going to be hard to get there on the road. I think it will hurt my property value. I don't want that business next to my house.

GREG FERRIS I did not contact anybody. Mr. Kaplan addressed the deeper issues of Planning. Mr. Barfield, when will Derby get there-nobody knows. Mr. Kaplan is asking you to do is to deny us the right that we have because we have the zoning. Development is slowing down a little bit. The likelihood of this getting annexed is going to be a long time. The church is on the edge on the county as soon as they develop they will go to Derby. Most Conditional Uses do not have a time limit. Rural Residential does allow this use. Derby's issues if you look at them only one of the Comprehensive Plan. There is nothing wrong with that lagoon. We have a letter from the County-they have been out there and they have looked at the property. We had a flood and there was not flood from that lagoon. We believe that we do meet the conditions but if you look at what you are to consider in a Conditional Use I think we meet all of them but the Derby Comp Plan but we do comply with the Sedgwick County Plan.

WARREN Where is the other doggie daycare?

FERRIS Light Commercial but they do about residential or are in the middle.

GAROFALO I would like to hear from someone from Derby Planning Commission.

LARRY GOULD, Planning Commission in Derby. We came here as spectators only MAPD and Derby Planning Department are together on this.

GAROFALO Do you have any reason to believe that this area will be annexed in the immediate future.

GOULD I am speaking, as an individual. Normally there are certain conditions that will trigger the annexation. I have lived in Derby since 1965. I have been on the Derby City Council and we were asked to visualize into the year 2010 and we all had visions where Derby might be at that time. No one thought that we would be annexed as far east as we have.

WARREN Wouldn't you think highly likely that it will be protested this annexation?

GOULD I don't want to guess that. As you know Derby has developed faster than we thought we would and we have passed issues that nobody thought that we would. If anyone is going to predict the growth I wouldn't predict on the lean side.

WARREN I am from Derby this puts me on the spot. I have to look at the issues the noise and traffic and who is going to monitor this? County Commissioners know we don't have staff to monitor unless we get complaints. I think they have satisfied the noise and traffic I would like to ask the applicant if they plan on improving the road.

FERRIS I don't think we have any intention of improving the road.

WARREN The driveway or drive into the facility is okay?

FERRIS We will improve that with rock-with the typical rock that you would see in that area.

MARNELL I have a couple of questions for Dale. This is not unusual when it is annexed and is nonconforming then it has been rezoned?

MILLER Yes, that is correct. They have to comply with the new City's rules and regulations.

MARNELL The prior staff report-what changes need to be made to that in order for them to agree now?

MILLER I think condition #5 will need to be revised.

FERRIS Another two years if annexed.

MILLER Condition #5 would remain as proposed; Condition #6 would have to be bumped up to 60 dogs with a limit to 30 dogs in the first barn and 30 on the second barn. For the first 30 dogs with one barn they would be allowed outside for two hours a day; the second barn then they would not be outside at all.

Item 8 hours of pickup were dropped the evening hours to 8 p.m.

BARFIELD This will go back to BOCC?

MILLER Yes.

**MOTION:** To deny the conditional use because it will change the character of the neighborhood, Derby Planning Commission denied it twice because it is in their area of influence, there was neighborhood opposition, the road doesn't look real good. This commission should override that.

**GAROFALO** moved, **BLAKE** seconded the motion.

**SUBSTITUTE MOTION:** To approve subject to staff comments with conditions Dale stated earlier.

**MARNELL** moved, **ANDERSON** seconded the motion.

WARREN To insure that second building is built, can we have a time limit to have the second building built?

MARNELL Can they applicant do that within two years.

FERRIS There are some platting issues. We prefer no time limit because if that doesn't pass then no less than three years.

WARREN How will this be contained?

FERRIS We will have to get the Derby's permission to get this second building built.

MARNELL Leave the motion the way that it is.

BARFIELD Dale can they put 60 dogs in one building?

MILLER No, only 30 dogs in one building?

**SUBSTITUTE MOTION** carried (7-3) **BARFIELD, BLAKE AND GAROFALO OPPOSED.**

WARREN A question about it going to BOCC.

MILLER The BOCC asked it to come back to MAPC, thinking that Derby might change their mind.

4. **Case No.: ZON2002-00063** – Socora Village Company, c/o George Sherman (owner) request a Zone change from "GO" General Office to "LC" Limited Commercial and Amendment to Protective Overlay #49 on property described as:

Lot 21, Block 9, Evergreen, an Addition to Wichita, Sedgwick County, Kansas. Generally located On the northwest corner of Maize Road and Central Park.

**BACKGROUND:** The applicant is requesting rezoning of a 19.64-acre parcel on the northwest corner of Maize Road and Central Park Street to "LC" Limited Commercial. The property is currently zoned "GO" General Office and restricted to 155,000 square feet of office uses or hotel/residential uses up to a maximum of 310 units. The requested change would allow "LC" type development along Maize Road (within 850 feet of Maize Road) except for prohibiting taverns, drinking establishments, adult entertainment,

service stations, vehicle repair, convenience stores, and car washes. The remaining 300 feet along the western edge of the parcel would be more restricted. Only "GO" or "NR" Neighborhood Retail uses would be allowed.

The applicant originally requested a maximum gross floor area of 200,000 square feet for all uses on the application area, but has scaled back the request to limit the retail component to 150,000 square feet. Further, if the "LC" square footage is developed, the applicant has agreed to scale back the office development on the parcels to the south located between 21st Street North and Central Park Street. This would keep total traffic volumes within the same range as has already been approved for the NewMarket Square development.

The property is not a community unit plan. It is part of NewMarket Square, a master planned development with approximately 100 acres for commercial (retail/office/hotel) development. The main parcel of 65 acres was approved for zoning and development prior to annexation to Wichita and before C.U.P. provisions were available for application to county projects. The protective overlay provisions serve in a similar manner as a C.U.P.

The protective overlay proposes a 23 percent maximum building coverage and gross floor area. Net floor area would be closer to 30 percent since approximately one-fourth to one-third of the property is anticipated to be part of a lake feature. The PO amendment requests an increase in sign height for one sign to 30 feet. Other provisions are similar to the existing P-O.

A larger portion of the site, perhaps 60 percent, is shown on the FEMA maps as being within the 100-year floodplain. The lake feature is incorporated for storm water detention and the applicant is in the process of receiving the appropriate permits from state agencies. The placement of the lake feature on the western part of the lot helps buffer the single-family neighborhood to the west from the commercial uses.

The property is currently in vacant. The property to the west, zoned "SF-5", has recently been developed as Evergreen, a single-family residential neighborhood. The property to the north, is zoned "SF-20", and is vacant and a portion is within the Pracht wetlands. The property to the east is zoned "SF-5" and occupied by a residence on a large acreage. A small commercial tract with a mix of "NR" Neighborhood Retail, "GO" and "NO" Neighborhood Office zoning is located south of this acreage, and Chadsworth, a single-family residential neighborhood, is farther to the southeast. The Pracht wetlands are located to the northeast on property zoned "SF-20". The property immediately south of Central Park is part of NewMarket Square, zoned "LC", but is vacant. Farther south, the property has been developed with a wide range of commercial and retail activities comprising NewMarket Square. Total size of NewMarket development, including the subject tract, is approximately 100 acres.

**CASE HISTORY:** The area was platted as Lot 21, Block 9 of Evergreen Addition on August 31, 1998.

The property was zoned "MF-18" Multi-family Residential on September 24, 1997 with Protective Overlay #23 and was limited to 310 dwelling units (SCZ-0749). Less than two years later the property was rezoned to "GO" with Protective Overlay #49 (Z-3309), approved March 16, 1999. Development on parcel was limited to a maximum of 155,000 square feet of office or up to 310 hotel rooms/dwelling units; each room or dwelling unit constructed was to reduce office use by of 500 square feet.

#### **ADJACENT ZONING AND LAND USE:**

NORTH:	"SF-20" Single-Family	Vacant, Pracht wetlands
SOUTH:	"LC" Limited Commercial	Vacant
EAST:	"SF-5" Single-Family;	Large suburban acreage, Pracht wetlands
WEST:	"SF-5" Single-Family	Single-family residential

**PUBLIC SERVICES:** Maize is a six-lane arterial with open storm drainage on both sides of the roadway. There are two northbound and two southbound lanes, a decel lane along the west side along the subject tract, and middle turn lane. The road tapers to a four-lane arterial north of the subject tract. Current traffic volumes for Maize Road at 21<sup>st</sup> Street North were estimated 17,967 cars per day. Projected volumes for 2030 are 22,000 cars per day. Central Park is a collector street with a median extending to the west from Maize Road.

All other normal public services are available.

#### **CONFORMANCE TO PLANS/POLICIES:**

The Wichita Land Use Guide in the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* classified the subject tract as office and low density residential. The remainder of the NewMarket development is classified as commercial. The requested rezoning is an increase in intensity from its designation as office and low density residential on the *Comprehensive Plan*. It should be pointed out that the low-density designation is inappropriate since the property has already been zoned for office use.

The Comprehensive Plan objective for commercial use (**Objective III.B**) is to "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses" as appropriate at this location. **Strategy III.B2** recommends to "integrate the development of out parcels in relation to planned retail centers through shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The proposed general provisions, as recommended, embody this strategy by extending the same development pattern as in the main portion of NewMarket Square and by limiting access on Maize Road. It is part of a master-planned center.

**RECOMMENDATION:** The proposed protective overlay eliminates the "LC" uses that are less compatible with residential areas, such as car washes and auto-oriented uses. The provisions provide good separation between the residential neighborhood and the commercial tract, which would be further strengthened by the lake along the west and a buffer averaging 100 feet in width with a minimum width of 50 feet.



If approved as originally requested, the development would generate an increase the intensity allowed on the site by adding retail/commercial activities and would generate additional traffic on Maize Road. This is contrary to the previous zoning case (Z-3309) when increased intensity on Lot 26, Block 7, Evergreen Addition (a 20-acre tract between the main NewMarket parcel and the application area) was granted, but only if offset by a commensurate decrease in building area on the main NewMarket Square parcel for retail activities.

The revised request would follow the precedent set in Z3309 by reducing the total development allowed south of Central Park Street if retail use is located north of Central Park Street. The overall development level of 968,000 square feet south of Central Park Street would be reduced to 825,000 if 150,000 square feet of "LC" uses were located on the subject tract. Overall, traffic volumes would increase slightly; the more apparent effect would be less mixing of office uses among the commercial/retail activities.

The recommended protective overlay incorporates most of the provisions requested by the applicant. It also replicates the provisions in Protective-Overlay #36 that governs the main NewMarket Square parcels.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to the following amended provisions for Protective Overlay #49, described as:

Lot 21, Block 9, Evergreen, an Addition to Wichita, Sedgwick County, Kansas. Generally located north of 21<sup>st</sup> Street North and west of Maize Road.

1. Development of Lot 21, Block 9 of Evergreen Addition shall be limited to a maximum gross floor area of 200,000 square feet; further, the total floor area for all commercial uses (defined as uses allowed in the "LC" Limited Commercial district but not in the "GO" General Office district and not including a hotel) shall be limited to 150,000 square feet. The maximum number of residential units and/or hotel rooms shall be 310 units. If approved, the applicant agrees to reduce maximum floor area for all tracts located in P-O #36 and P-O #49 south of Central Park Street to a maximum of 825,000 square feet for all types of development (including up to 750,000 square feet of "LC" uses). This reduction shall be executed by an administrative adjustment to the respective P-Os.
2. Maximum building coverage for the application area shall be limited to 150,000 square feet for Lot 21, Block 9 of Evergreen Addition.
3. Signs shall be in accordance with the Wichita Sign Code with the following exceptions:
  - a. No off-site, portable signs, or signs with rotating or flashing lights shall be permitted.
  - b. If the property is platted into multiple lots, an agreement for signage allocations will be required.
  - c. All freestanding signs along Maize Road shall be monument type signs with a maximum height of 20 feet; provided however, one sign may be a monument type sign with a maximum height of 30 feet. These monument signs shall be spaced 150 feet apart regardless of ownership or leasing with a maximum height of 20 feet, except that the number of signs permitted shall be reduced by one sign for each five feet of height above 20 feet. The maximum square footage of sign area permitted for ground monument signs shall be calculated at 0.8 square feet per foot of linear street frontage on Maize Road.
  - d. All freestanding signs along Central Park Street shall be monument type signs with a maximum height of eight feet. These monument signs shall be spaced 150 feet apart regardless of ownership or leasing. The maximum square footage of sign area permitted for ground monument signs shall be calculated at 0.5 square feet per foot of linear street frontage on Central Park Street, with a maximum allowable size per sign of 50 square feet.
  - e. Window display signs shall be limited to 25 percent of the window area and shall not be allowed within the western 300 feet of the application area. No signs shall be allowed on the rear of any buildings.
4. Architectural Control:
  - a. All buildings within this property and the property to the south (Newmarket Square Addition) shall share similar architectural character, color, texture, and the same predominate exterior building materials. Building walls and roofs shall have predominately earth-tone colors, with vivid colors limited to incidental accent. This requirement shall be waived by the Planning Director if a landscape plan is submitted and approved providing 25 percent above the minimum number of trees required by the City of Wichita Landscape Ordinance.
  - b. All parking lot light poles in this property and the property to the south (Newmarket Square Addition) shall be of the same color and design, and shall have cut-off fixtures that direct light away from nearby residential areas. Light poles and fixtures shall not exceed 14 feet in height within 200 feet of the western property line.
  - c. Any structure over 400 feet in length shall be designed so as to stagger the front facades, or designed in another manner as approved by the Planning Director, to break up the visual expanse of the structure.
5. All buildings shall be limited to 35 feet in height with a maximum of three stories and be setback at least 35 feet from Maize Road and Central Park.
6. All uses permitted by right in the "LC" Limited Commercial district shall be permitted on the east 850 feet of the parcel except for taverns, drinking establishments, adult entertainment, service stations, vehicle repair facilities, convenience stores, and car washes.

7. Only those uses permitted in the "GO" General Office and "NR" Neighborhood Retail districts shall be permitted on the west 300 feet of the parcel.
8. Loading areas, trash receptacles, and docks shall be screened from ground level view from Maize Road, Central Park and any adjoining residential properties. Screening of all trash dumpsters, outside storage, and mechanical equipment will be constructed of material to match and preferably be connected to the buildings they support.
9. This lot shall be permitted two openings on Maize Road. The south opening shall be no closer than 200 feet from the right-of-way line of Central Park and shall be right-in/right-out only.
10. Screening shall be in accordance with the Unified Zoning Code except that if a screening wall is required, it shall be constructed of a material (excluding wood or woven wire), pattern and color that is consistent with the building walls.
11. Landscape buffers and screening – shall be in accordance with the Landscape Ordinance of Wichita. In addition, any parking lot shall require a minimum of one (1) shade tree or two (2) ornamental trees for every 20 parking spaces.
12. Site circulation:
  - a. Prior to issuing building permits, the applicant shall submit and receive approval by the Planning Director and Traffic Engineer of an overall site circulation plan. The Plan shall show land use relationships, access points and/or control, setbacks, interior circulation, parking, screening and other design considerations that may affect adjacent property or the general health and welfare of the public.
  - b. Prior to issuing building permits for each phase of development, a plan for a pedestrian walk system shall be submitted and approved by the Planning Director. This walk system shall link sidewalks along Maize Road and Central Park with the major entrances to the development and shall line with the proposed buildings within the development. Gaps in the masonry wall as required in General Provision No. 9 to link with the walk system and to allow pedestrian access for the north or west shall be permitted if approved by the Planning Director.
  - c. If the lot is divided into separate tracts, cross-lot circulation between the tracts shall be required at the time of lot splits.
13. All utilities shall be installed underground.
14. Parking shall be in accordance with the Unified Zoning Code.
15. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as P-O#49) includes special conditions for development on this property.

GEORGE SHERMAN The staff report that I have, I don't have any problem with it. We had agreed with staff to illuminate the Neighborhood Retail on the back portion on the property.

DONNA GOLTRY, Planning Staff presented the staff report and stated that no neighbors are present. Slawson is in agreement with all of the staff conditions, as I understand it. At this point, there are two minor modifications that I did want to get into the record so that it accurately reflects the conditions. One is the one we were just talking about. The item on page 6 related to the western 300 feet of the parcel should be changed to allow only those uses permitted in the GO General Office, including a hotel. That is something we talked about at the DAB V meeting, but it was primarily driven by the applicant. Mr. Sherman had a letter presented to the neighborhood that stated that they would be doing that. Since the applicant alleged that to the neighborhood, we felt it was good for us to amend our condition to be more restrictive to that case. We need to talk about signalization. Staff is recommending possible signalization be discussed with traffic engineering.

WARREN It is not a condition now right?

GOLTRY No, we want to add a condition in your motion to add signalization at the NewMarket entrance and Maize and Central Park.

WARREN I am concerned about this conditions.

GOLTRY The developer is asking he not be responsible with the 100 percent of the cost.

SHERMAN I wish this would have been addressed earlier to affect the other contributors of the traffic. Wal-Mart should have to carry some of the money. I don't mind paying some of the share at the main entrance I am not saying that is totally fair. That one at Central Park serves the Evergreen neighborhood. That one came up two hours ago. We would be willing to do 60% of that cost if that comes up and it is warranted to have a signal there.

WARREN I would like to see that map at the intersection.

GOLTRY The main entrance where Red Hot and Blue is.

WARREN Now show me on the next map. I am having a problem with proportionality. I think a cost spread would go to that as well. So Sherman owns everything to the North but Wal-Mart.

HENTZEN As I understand staff is in agreement with the 100 % on one and 60% on the other? Is that what staff is recommending.

GOLTRY Staff would be in agreement with that.

**MOTION:** To approve subject to staff comments including the later signalization agreement and remove the NR uses on the western 300 feet.

**WARREN** moved, **MCKAY** seconded the motion, and it carried (10-0).

5a. **Case No.: ZON2002-00055 (Associated with CUP2002-00038 DP67#5)** – Berexco Inc. c/o Robert Beren (owner); AM Consulting Inc. c/o Tim Austin (agent) request a Zone change from “GO” General Office and “MF-18” Multi-family Residential to “OW” Office Warehouse

and

5b. **Case No.: CUP2002-00038 DP67 #5 (Associated with ZON2002-00055)** - Berexco Inc. c/o Robert Beren (owner); AM Consulting Inc. c/o Tim Austin (agent) request an Amendment to the Northborough Community Unit Plan

Lot 3, Block 1; Lots 1 and 2, Block 2 and Reserve A, all in Northborough 3rd Addition, Wichita, Sedgwick County, Kansas.  
AND  
Block 1, Hebrew Congregation Addition to Wichita, Sedgwick County, Kansas. Generally located South of 21<sup>st</sup> Street North and east of Woodlawn.

**BACKGROUND:** The applicant requests a zone change from “GO” General Office and “MF-18” Multi-Family to “OW” Office Warehouse on a platted, mostly-vacant, 46.47-acre tract generally located south of 21<sup>st</sup> Street North and east of the Woodlawn. The applicant also requests an amendment of DP-67 Northborough Community Unit Plan (CUP) to allow office and research oriented uses and to change two large parcels and a reserve into 12 smaller parcels and a smaller reserve, including a realignment of the streets and a relocation of the drainage retention area.

The character of the surrounding area is predominately office and commercial, with a shopping center and office park to the west, commercial uses to the north, and office uses to the east. The nearest residential properties are located east of the subject property across a 100-foot wide utility easement with large electrical power lines and poles. The properties to the north are zoned “LC” Limited Commercial and “B” Multi-Family and are developed with retail businesses, a restaurant, and a nursing home. The properties to the east are zoned “GO” General Office and “MF-18” Multi-Family and are developed with offices and single-family residences, with a large vacant tract approved for the development of townhouses. The property to the south is zoned “SF-5” Single Family and is undeveloped land owned by Westar Energy. The property to the west is zoned “SF-5” Single Family and is developed with the Hebrew Congregation Synagogue.

The CUP proposes all uses permitted by right in the “OW” district except for outdoor storage and work areas; tattoo and body piercing facilities; self-service storage warehouses; recycling processing centers; veterinary clinics with outdoor runs; and auditoriums or stadiums. The CUP also proposes to limit manufacturing facilities to those with the entire frontage of the ground floor used for office or display space. The maximum building height proposed is 45 feet. A maximum building coverage of 30% and a maximum gross floor area of 40% are proposed. Each parcel is proposed to be limited to two buildings, except for Parcel 18, which would permit 20 buildings. Setbacks are proposed to be those allowed by the “OW” district, except along Bramblewood, where a 75-foot setback is proposed, and along Rockhill and Stratford, where a 35-foot setback is proposed. Signage is proposed to be per the city code for the “OW” district, except that all signs are proposed to be monument type and spaced a minimum of 150 feet apart. Landscape street yards with a minimum depth of 10 or 15 feet, depending upon overall lot depth, and parking lot screening and landscaping are proposed for all parcels. The existing hedgerow along the east property line is proposed to be maintained. No screening wall along the south or east property lines is proposed due to the large reserve and existing hedgerow along the east property line and the existence of utility-owned property to the south. All buildings are proposed to have the same predominate exterior building materials and architectural character, with metal prohibited from being a predominate exterior building material. Sidewalks are proposed along the street frontage of the parcels to provide for pedestrian circulation. Since the parcels are located along local streets and since each parcel has street frontage, cross-lot vehicular access is not proposed.

**CASE HISTORY:** The zoning of the subject property was changed (Z-1666) from “AA” One Family (now “SF-5”) to “R-5” General Residence (now “MF-18”) and the Northborough CUP (DP-67) and the Northborough Addition were established in 1977. The zoning for approximately 13 acres of the subject property was changed (Z-2754) from “R-5” General Residence (now “MF-18”) to “BB” Office (now “GO”) in 1987, at which time an associated CUP amendment and replat to the Northborough 3<sup>rd</sup> Addition were approved.

#### **ADJACENT ZONING AND LAND USE:**

NORTH: “LC” & “B”	Retail, restaurant, nursing home
SOUTH: “SF-5”	Undeveloped, utility-owned property
EAST: “GO” & “MF-18”	Office, single-family, undeveloped townhouse property
WEST: “SF-5”	Hebrew Congregation Synagogue

**PUBLIC SERVICES:** The subject property has access to Bramblewood, an existing local business street, and Rockhill and Stratford, proposed extensions of existing local business streets. Bramblewood and Stratford intersect with 21<sup>st</sup> Street North and Rockhill intersects with Woodlawn. The Rockhill-Woodlawn intersection is signalized. Traffic volumes on 21<sup>st</sup> Street North are approximately 19,500 vehicles per day and are estimated to increase to 28,000 vehicles per day in the 2030 Transportation Plan. Traffic volumes on Woodlawn are approximately 22,000 vehicles per day and are estimated to increase to 25,000 vehicles per day in the 2030 Transportation Plan. The estimated increases in traffic on these arterial streets was based on an assumption that the subject property would develop with office and multi-family uses. Planning staff estimates that the proposed use of the subject property would increase traffic on these arterial streets by approximately 500 trips per day above the 2030 estimates for each street.

Even with the increased traffic generated by the proposed use of the subject property, the 2030 Transportation Plan's recommendation that both 21<sup>st</sup> Street North and Woodlawn be widened five-lane roadways would be sufficient to carry future traffic volumes. The City's Capital Improvement Program contains projects to widen both roadways to five lanes, with 21<sup>st</sup> Street North scheduled for 2007 and Woodlawn scheduled for 2009. Municipal water and sanitary sewer are available to serve the subject property. The drainage plan for the subject property will be redesigned through the replatting process, including relocating the drainage retention area from Reserve A to Parcel 18.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide" of the Comprehensive Plan identifies the general location as appropriate for "High-Density Residential" development. The "High-Density Residential" category is intended to support residential densities in excess of 10 unit per acre, such as garden apartments, condominiums, and special residential accommodations for the elderly. With the exception of a slightly higher traffic generation rate, the proposed use of the subject property would have similar impacts on nearby properties as high-density residential uses.

The Unified Zoning Code states that the purpose of the CUP overlay district is to protect public health, safety and general welfare through the listed standards; to ensure development with proper ingress/egress, parking, drainage, screening, signage, environmental control, and other requirements and amenities; and to ensure the character of the development is appropriate to the neighborhood and conditions and safeguards should be provided to ensure that the development will minimize any diminution, if any, in value of surrounding property. In order to meet the purpose the CUP overlay district, the proposed CUP provides for limitations on uses; restricts building height, size, and design; and provides for greater building setbacks, landscaping, and sign controls than would be required if the property were developed within the development standards of the "OW" zoning district.

**RECOMMENDATION:** Based on the information available prior to the public hearing, planning staff recommends the request be APPROVED subject to the following conditions:

- A. APPROVE the zone change (ZON2002-00055) to "OW" Office Warehouse subject to replatting within one year.
- B. APPROVE Amendment #5 to the Community Unit Plan (DP-67: Northborough CUP) subject to replatting within one year and subject to the following conditions:
  1. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
  2. Any major changes in the development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
  3. The applicant shall submit four 24" x 36" folded copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is predominately office and commercial, with a shopping center and office park to the west, commercial uses to the north, and office uses to the east. The nearest residential properties are located east of the subject property across a 100-foot wide utility easement with large electrical power lines and poles. The request is compatible with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "GO" General Office and "MF-18" Multi-Family Residential and could be developed for office and multi-family uses; however, the site has remained undeveloped for 25 years. Additionally, there are high-voltage transmission and distribution lines that run along the east length of the property. The overhead lines and the proximity to an electrical substation to the south appear to have discouraged residential use of the subject property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The CUP provides for limitations on uses; restricts building height, size, and design; and provides for greater building setbacks, landscaping, and sign controls than would be required if the property were developed within the development standards of the "OW" zoning district. The additional development regulations along with the open space reserve and existing hedgerow should limit detrimental affects on nearby residential properties located east of the subject property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "Wichita Land Use Guide" of the Comprehensive Plan identifies the general location as appropriate for "High-Density Residential" development. The "High-Density Residential" category is intended to support residential densities in excess of 10 unit per acre, such as garden apartments, condominiums, and special residential accommodations for the elderly. With the exception of a slightly higher traffic generation rate, the proposed use of the subject property would have similar impacts on nearby properties as high-density residential uses. The Unified Zoning Code states that the purpose of the CUP overlay district is to protect public health, safety and general welfare through the listed standards; to ensure development with proper ingress/egress, parking, drainage, screening, signage, environmental control, and other requirements and amenities; and to ensure the character of the development is appropriate to the neighborhood and conditions and safeguards should be provided to ensure that the development will minimize any diminution, if any, in value of surrounding property. As proposed, the CUP meets the purpose of the CUP overlay district.

5. Impact of the proposed development on community facilities: Only a minor increase in traffic would be generated by the proposed use of the subject property, and existing capital improvements to roadways are planned to address future traffic in the area. Municipal water and sanitary sewer services are adequate to serve the subject property. The drainage plan for the subject property will be revised during the replatting process.

Applicant doesn't need to speak. Staff and applicant have agreed on the report.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **ANDERSON** seconded the motion, and it carried (10-0).

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- 6a. **Case No.: ZON2002-00057 (Associated with CUP2002-00039 DP263)** – Robert Beren (owner); A&M Consulting, Tim Austin (agent) request a Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial

and

- 6b. **Case No.: CUP2002-39 DP263 (Associated with ZON2002-57)** – Robert Beren (owner); A&M Consulting, Tim Austin (agent) request the creation of the Woodborough Commercial Community Unit Plan on property described as:

Beginning 100 feet North and 40 feet East of the Southwest corner of the Northwest Quarter of Section 7, Township 27 South, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; thence North parallel and adjacent to the East road right of way line of Woodlawn Street, a distance of 462 feet; thence East along the South line of Hebrew Congregation Addition to Wichita, a distance of 700 feet; thence South a distance of 462 feet; thence West a distance of 700 feet to the point of beginning. Generally located North of 17<sup>th</sup> Street North and east of Woodlawn.

**BACKGROUND:** The applicant requests "LC" zoning on a un-platted, vacant, 7.43-acre site located east of the Woodlawn and 17<sup>th</sup> Street North intersection. The applicant requests a commercial Community Unit Plan (CUP) with four Parcels (see attached CUP site plan) for all "LC" uses, permitted by right, except adult entertainment, correctional placement residence (limited and general), night club in the city, tavern and drinking establishment, construction sales/service, hotel/motel, recreation and entertainment (indoor), and service stations.

The application area is surrounded on all sides by "SF-5" zoning. North of the site is the Hebrew Congregation Synagogue. South of the site is a KGE owned access drive, further south is a rail corridor, a fire station, and single-family residences. The rail line is proposed as a future rail banking alignment for a pedestrian/bike path. A KGE Substation is directly east of the site; further east of the site is undeveloped "SF-5" zoned property. Northeast of the site, beyond the Hebrew Congregation property, is DP-67, zoned "GO" and "MF-18". West of the site, across Woodlawn, are single-family residences, and the First Free Evangelical Church. The site has 10-foot utility easements along the north and south boundaries, a 20-foot utility easement along the east boundary, and an east - west running 60-foot wide overhead utility easement bisecting the site.

The CUP proposes 23% building coverage on each of the Parcels. The CUP proposes a floor area ratio of .23 for commercial uses, or .46 for office uses. The CUP proposes 3 maximum buildings on Parcels 1 and 2, and 4 maximum buildings on Parcels 3 and 4; all buildings are proposed to have a maximum height of 35 feet.

The applicant proposes 2 openings on Woodlawn, one to align with 17<sup>th</sup> Street, and the other to be halfway between 17<sup>th</sup> and the Hebrew Congregation Drive. This proposed option for openings comes very close to meeting the 200-foot separation standard of the Access Management Policy. The applicant proposes installing a northbound decel lane, and participating in a petition to create a left turn lane on Woodlawn, to include a central raised median on Woodlawn.

The applicant proposes a 35-foot building setback on the north and west boundaries, and 10 and 20-foot utility easements on the south and east boundaries respectively. The applicant proposes a 6 to 8-foot opaque masonry screen wall on the north and south site boundaries, as required by the Sec.III-C.2(d) UZC, to prevent the passage of debris and light, and to mitigate adverse visual impacts. The applicant proposes no screen wall on the east property line, as it borders the KGE Substation and open space, and is not visible from residences or any future residences; this request is a waiver from the requirements of the UZC. The applicant proposes meeting the landscape buffer requirement on all boundaries, which is required by the Landscape Ordinance.

The applicant proposes that all buildings in the CUP be required to share similar architectural character, color, texture, and same predominant exterior building material, with vivid colors limited to incidental accent. The applicant further proposes that all north, south, and west facades of buildings be constructed of a consistent brick. The applicant proposes that lighting be shielded downward, and away from residential areas, and proposes that light poles be limited to 20 feet in height.

Signage on the CUP is proposed as being monument signage, limited to 20 feet in height, no rotating or flashing signs, no portable or off-site signs, and a minimum of 150 feet between signs. All signs are proposed to be on Parcels 1 and 2; signage is proposed as 75 square feet for Parcels 1 and 2, and 110 square feet for Parcels 3 and 4.

The applicant proposes cross-lot circulation agreements on all Parcels to assure internal vehicular movement between Parcels, but designates no circulation plan or drive. The applicant also proposes a pedestrian circulation system, to be approved by the Planning Director prior to issuing building permits, to provide pedestrian connections from the buildings within the CUP to the sidewalk on Woodlawn, and to provide pedestrian connections between the buildings.

**CASE HISTORY:** The subject property is unplatted. KGE previously owned this property for a possible expansion of the existing substation to the east. A similar request (CU-534 & Z-3332) was filed in 1999, but withdrawn prior to being considered by MAPC.

The most recent request on this property was ZON2000-33, which requested a combination of "LC" and "GO" zoning, and proposed a furniture store, offices, and a Conditional Use request (CON2000-28) for self service storage. Staff, DAB II, and MAPC recommended approval of that request, subject to a protective overlay (P-O). However, neighbors, to include the Hebrew Congregation, opposed the request, and City Council denied the request.

In that case, the applicant identified specific uses that were low traffic generating uses; it was estimated that the previous application would generate 1,400 trips per day. The applicant in that case requested one opening on Woodlawn, with a designated private drive to the various Parcels, a northbound decel lane, and participation in any future petition to create a left turn lane on Woodlawn. That proposal limited storage buildings to 20 feet in height and other buildings to 25 feet; called for brick on the north, south, and west facades of all buildings; called for no outdoor speakers; and signage was to be monument, and not to exceed 12 feet in height or 50 square feet.

That proposal specified the only "LC" use as a furniture store, but further restricted "LC" uses to exclude adult entertainment, convenience stores, construction sales/service, hotel/motel, night club, recreation and entertainment (indoor), service station, tavern and drinking establishment, tire and battery stores, vehicle repair limited, and drive-up or in-vehicle food service.

#### **ADJACENT ZONING AND LAND USE:**

NORTH:	"SF-6"	Hebrew Congregation Synagogue
SOUTH:	"SF-6"	KGE access drive, railroad, fire station, single-family residences
EAST:	"SF-6"	KGE Substation
WEST:	"SF-6"	single-family residences, First Evangelical Free Church

**PUBLIC SERVICES:** This site has no current access onto Woodlawn, a four-lane arterial. Half-width right of way at this location is 40 feet, the Access Management Policy calls for 60 feet half-width right of way on arterials. The 2030 Transportation Plan designates this section of Woodlawn to become a five lane arterial, and the CIP shows this section of Woodlawn being widened to five lanes in 2009. Traffic volumes for 2000 were 21,732 (ADT) along Woodlawn near 17<sup>th</sup> Street North. The current level of traffic classifies as Level D on an A through F system, which translates into delays of up to 40 seconds. Traffic volumes for 2030 are projected to be 25,502. The unspecified uses for the proposed 72,867 maximum square feet of commercial uses, or 145,734 maximum square feet of office uses are estimated to generate an additional 2,750 ADTs.

City water and sewer are available at the application area. A 10-foot utility easement exists along the north and south boundaries of the application area, a 20-foot utility easement exists on the east boundary of the site, and a 60-foot overhead utility easement runs east – west, bisecting the site.

Sidewalks exist on both sides of Woodlawn at the application area, the rail corridor to the south is proposed for a rail banking pedestrian/bike path project.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the general location as appropriate for "Low-Density Residential" development; however, the *Comprehensive Plan* indicates Institutional and Office uses as appropriate directly to the north. The Commercial Locational Guidelines of the *Comprehensive Plan* discourage commercial sites at mid-mile locations such as this proposal; these guidelines require site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential land uses.

The UZC states (page 98) that the CUP is intended to protect public health, safety and general welfare through the listed standards; to ensure development with proper ingress/egress, parking, drainage, screening, signage, environmental control, and other requirements and amenities; and to ensure the character of the development is appropriate to the neighborhood and conditions and safeguards should be provided to ensure that the development will minimize any diminution, if any, in value of surrounding property. The UZC goes on to specify CUP minimum setbacks, lot coverage, building height, and screening.

The UZC then goes on to state that the Planning Commission or Governing Body may modify or waive the setback, lot coverage, height, parking, and/or screening requirements in this section and elsewhere in the Code as part of the approval or amendment of a CUP, where the objectives of the *Comprehensive Plan* and good planning practices are furthered, provided that the Planning Commission or Governing Body must set forth the specific reasons for such modification and an explanation of how such modification or waiver meets the criteria and purpose of this section.

The proposed CUP does not meet the screen wall requirement of the UZC on the east property line, because of abutting "SF-5" zoning. Likewise, the proposed south and east setbacks do not meet UZC requirements; the setback and screen wall issues could be viewed as insignificant because of abutting utility uses to the east and south. The proposed two openings on Woodlawn are just under the 200-foot spacing requirement for openings in the Access Management Policy, due to existing drives on Woodlawn and the 17<sup>th</sup> Street intersection.

The Access Management Policy requires the applicant to conduct a limited traffic impact study if development plans would generate more than 100 trips in a peak hour, and a detailed traffic impact study if development plans would generate more than 500 trips in a peak hour. The requested "LC" square footage in this case would require a limited traffic impact study.

**RECOMMENDATION:** This property is surrounded by property zoned "SF-5" and used for residential and institutional uses, and the *Comprehensive Plan* identifies the site as appropriate for "Low -Density Residential" development. However, the presence of the KGE Substation, and the 60-foot overhead utility easement makes residential use potentially less desirable on this site.

Staff finds that this zone change and CUP request needs a limited traffic study to determine the timing of discussed roadway improvements; the discussed improvements are necessary to mitigate the effects of increased traffic on Woodlawn. Another potential traffic relieving option for this site would be a connection to Rockhill, giving the site two points of ingress and egress.

Therefore, based upon information available prior to the public hearings, planning staff recommends that the zone change request be APPROVED, subject to platting within one year, and the following conditions in addition to the proposed CUP:

1. The applicant shall add "convenience stores", and "drive-through food service" to the list of prohibited uses in the CUP.
2. Dedication of 20 feet of right of way on Woodlawn, one opening aligned with 17<sup>th</sup> with full movement and a decel lane, a right-in/right-out only opening centered between the full movement opening and the Hebrew Congregation opening, and a improvement to create a 5<sup>th</sup> turn lane on Woodlawn, with a raised center median on Woodlawn across from the right in/right out opening, the applicant assuming their share of all improvements on Woodlawn.
3. As a part of plat approval, the applicant shall conduct a limited traffic study. Based on the findings of that study, the applicant shall propose a sequenced plan for the required improvements on Woodlawn. The proposed improvement plan shall be approved at the time of platting.
4. If the 17<sup>th</sup> Street intersection is determined to require signalization, the developer shall guarantee the signalization.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is developed with single-family residential uses, a fire station and the Hebrew Congregation Synagogue adjacent to the site, as well as another church across Woodlawn. Commercial uses are located further north toward Brittany Center. The most directly impacted properties by the proposed development are several residential properties zoned "SF-5" Single-Family Residential, located to the west and south, where the character of development is that of predominately brick single-story dwellings, and the Hebrew Congregation Synagogue to the north that is also zoned "SF-5." East of the subject property is a KGE Substation, which is zoned "SF-5." The railroad line, 160 feet south of the application area, is identified as a potential pedestrian/bike path.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "SF-5" Single-Family Residential and could be developed for single-family use; however, the site has remained undeveloped for some time. Additionally, there are high-voltage transmission and distribution lines that run the east-west length of the property, within an overhead utility easement. The overhead lines and the proximity to the substation could discourage residential use on the application area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of "LC" zoning, and a commercial CUP development at the application area will allow for significantly more intensive development than the current zoning permits. The requested "LC" development will result in significantly more traffic on Woodlawn, roughly estimated at 2,750 trips per day, adding to high existing traffic near Woodlawn and 17<sup>th</sup>. The *Unified Zoning Code* property development standards for CUPs, if employed, should mitigate negative effects on nearby properties. Design considerations on Woodlawn and on the site, and a potential connection to Rockhill could mitigate the negative effects of added traffic on Woodlawn and in the neighborhood.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested zoning change is not in conformance with the *Comprehensive Plan* "Wichita Land Use Guide", and is not in conformance with the Commercial Locational Guidelines of the plan. However, as discussed in this report, the application area may not be desirable for single-family development. The applicant has requested that the CUP be developed with a waiver from the standards of the UZC for CUPs (a screen wall requirement on the east property line, and reduced setbacks to the east and south), and with a waiver from the standards of the Access Management Policy (less than 200 feet between openings). The UZC states that any waiver of the requirements of the code within a CUP requires an explanation from the Planning Commission and/or governing body as to how the modification or waiver meets the criteria and purpose of the code, and furthers the objectives of the *Comprehensive Plan* and good planning practice.
5. Impact of the proposed development on community facilities: Proposed "LC" uses at this location will generate significant traffic. If traffic design considerations are employed on Woodlawn and on the site, and if a connection from the site is made to Rockhill, this site could be developed without excessive negative effects on Woodlawn and the surrounding neighborhoods.

JESS MCNEELY, Planning staff presented staff report.

There was opposition at the DAB meeting Tuesday night. There are traffic concerns. A traffic study is going to have to be done. Staff recommended approval, however, this property does not meet some of the requirements of the Comprehensive Plan. We are recommending approval subject to conditions.

GAROFALO What is proposed for this site?

MCNEELY LC uses, they propose limiting some of those uses. We don't know exactly what the development will be. There is a letter from Crown Height Association. They had some traffic concerns. Also, fire trucks from the nearby station have hard time getting out on Woodlawn.

BARFIELD You mean Crestview Heights? Anyone else there?

MCNEELY A few others.

BARFIELD What about the church? Who is going to make the determination of the signalization?

BARFIELD I don't think they need a traffic study. You know they already have a problem getting out on Woodlawn. They already told you that.

MCKAY Didn't we do a traffic study already on the C.I.P.?

MCNEELY That wasn't on this specific parcel; that study was for all of Woodlawn from 13<sup>th</sup> to 21<sup>st</sup>.

MCKAY Is the applicant going to do the traffic study or the City?

MCNEELY The applicant.

WARNER Item #2 and Item 3 conditions I have a problem with that. They should do condition #3 before #2.

MCNEELY The access management policy, in Item 3, requires the traffic study. This study would show how the improvements can be phased in as the site is developed.

WARNER That way you can tear the street up three or four times.

KIM EDGINGTON with AM Consulting We agree to staff recommend #2 and #3. We want to strike condition #1. The traffic study and these will adequately address these uses. Strike #1 and in addition we need to completely waive the screening requirement to the east; building setback of 10 feet to waive those as well. Waive building setback to 20 feet. Lastly the 5-foot wall easement on the property line may be waived in part of whole by administrative adjustment.

WARREN This would be on the C.U.P.? Item #4? Are you accepting the full cost of the signalizing?

EDGINGTON Yes we do agree to pay the cost.

MCKAY There are trees all along the north side of the track.

MARNELL If there is a natural wall there why put in another one?

EDGINGTON The C.U.P. is adjacent to the residential and will require agreement.

HENTZEN I don't think these regulations mean that you or the staff can't use common sense.

MCKAY From what we read and was sent to us is different.

EDGINGTON Their staff report was done and then we had a discussion this morning.

WARREN Dale, are you are in agreement?

MILLER With the wall on the east and the setback. The language about the south wall-the only problem we have is it was not presented to the DAB. We will notify the DAB and give them a chance to comment on that. We were not in agreement about striking Condition #1.

EDGINGTON The main concern at the D.A.B. was the traffic and we feel that we will do a traffic study and provide traffic improvement on Conditions #2.

WARREN Can you waive that wall?

MILLER No but you can waive it.

BARFIELD Would it make a difference what about a bicycle path?

EDGINGTON It would be residential because of KGE.

MILLER We felt like the Department had made a commitment to a certain level of development and try to be sensitive to the residential uses nearby and the church.

BARFIELD Any kind of retail business here they are going to have signalization?

MILLER There are things that will trigger the signalization. The traffic engineer is already here if you have questions.

BARFIELD There is already a trigger there two blocks down.

MARNELL Staff has put the applicant in a strange position.

MILLER They don't have a identified user for this development. If they do a convenience store then they will have to do a signalization.



MARNELL You are telling them you can't have these two uses because of the traffic and then tell them that they have to do a traffic study and do signalization.

MILLER Condition #1 and the signalization are separate issues. That kind of store is not appropriate to this site with the residential and the church.

WARREN It is getting commercialized already on Woodlawn. It is going to be commercial sooner or later.

MILLER We should be careful there with the surrounding uses.

EDGINGTON Because the traffic on Woodlawn is so great, economically, a drive thru is something that the developer could capitalize on the traffic on Woodlawn.

BARFIELD I don't know that the developer would want to put a store there because it is not on the corner.

EDGINGTON We feel the developer should be able to decide that.

CHARLIE WILSON works for Berexo (applicant), which is around the corner from here. This is a gas company and we have a new office building that sets by Dick's Sporting Goods. Anything that we do we are concerned of keeping the integrity there. Mr. Beren is a member of the synagogue. We feel that we want to be as wide open as possible. The DAB meeting discussed some traffic problems. We have agreed to pay for the signalization but I don't know about all the other improvements that need to be done to Woodlawn.

BARFIELD When was the last time a traffic study was done there?

LOGAN No we don't have a report on Woodlawn we know that it is getting busier. The traffic report is suppose to tell us when the traffic signal will need to be triggered and at what phase of the development. We are looking at a phasing plan. We want to look at this in the 2007-2009 CIP.

BARFIELD Have you ever approached Woodlawn from 17<sup>th</sup> Street there you have a very difficult time getting out of there.

LOGAN I was there today. Because of the trees we are going to a survey of it because of the site problem with the trees.

BARFIELD I do believe there is a need for signalization there.

LOGAN Basically there has been four accidents on Woodlawn and they were rear end crashes. I read what the neighbors had said at the meeting.

WILSON Regarding the traffic with or without or development, there is a school going in out there as well. There is a lot of activity starting on Woodlawn. The wall on the south side I feel that is unfair for us to build that to protect KGE road. It may be zoned residential, but I would like to see that condition waived.

MARNELL What is the width of the railroad right of way?

EDGINGTON 100 feet.

MARNELL There is a 200-foot buffer?

EDGINGTON: Yes.

MARNELL Moves to remove #1

MILLER A complete waiver or the language from Kim?

MARNELL Yes waive the wall because of the buffer there.

**MOTION:** To remove #1, eliminate the building setback on the north side of the property, and remove the screening wall requirement on the south side of the property.

**MARNELL** moved, **WARREN** seconded the motion, and it carried (9-0).

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The Metropolitan Area Planning Department informally adjourned at 4:12 p.m.

State of Kansas     )  
Sedgwick County    ) ss

I, Dale Miller, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on

\_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Dale Miller, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)